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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 95-167

In the Matter of

Amendment of Section 73.202(b), RM-8699
Table of Allotments,
FM Broadcast Stations.
(Claremore and Chelsea, Oklahoma)

NOTICE OF PROPOSED RULE MAKING

Adopted: October 24, 1995; Released: November 2, 1995

Comment Date: December 26, 1995

Reply Comment Date: January 10, 1996

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Michael P. Stephens ("petitioner"), permittee of Station KTFR, Channel 264A, Claremore, Oklahoma, requesting the reallocation of the channel from Claremore to Chelsea, Oklahoma, as the community's first local aural transmission service, and the modification of Station KTFR's permit to specify Chelsea as its community of license.¹ Petitioner states that he will apply for the channel, if reallocated to Chelsea.

2. Petitioner states that his request can be considered under the provisions set forth in Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner submits that the allotment of Channel 264A to Chelsea (population 1,620 persons)² would result in a preferential arrangement of allotments since it would provide the community with its first local aural service. He points out that Chelsea is an incorporated city with defined borders. In addition, the community has its own municipal government, police and fire departments, post office, newspaper, bank, churches, library, park and many civic clubs such as a Junior Cham-

ber and Lions. Further, petitioner submits that Chelsea provides for its own schools and water, electric and gas utility services.

3. Petitioner states that the reallocation of Channel 264A from Claremore (population 13,280 persons) will not deprive the community of its sole local broadcast service since the community will continue to receive such service from noncommercial educational Station KRSC-FM and fulltime AM Station KTRT. Petitioner also states that if Channel 264A remains allotted to Claremore, Station KTFR will be restricted to 3 kW operation because of short-spacings to co-channel Station KBBQ at Fort Smith, Arkansas, and Station KXOJ-FM, Channel 265A, Sapulpa, Oklahoma, while its reallocation to Chelsea will enable the station to improve its facilities to full Class A at 6 kW.

4. We believe the public interest would be served by proposing the reallocation of Channel 264A from Claremore to Chelsea since it could provide the community with its first local FM service and enable Station KTFR to improve its facilities to those of a 6 kW Class A service. Further, we note that petitioner is not seeking to move from a rural community to one within or closer to the Tulsa Urbanized Area. Rather, he is seeking to relocate to a community which is approximately 18 miles further removed from the Urbanized Area. Finally, Claremore will continue to receive aural transmission service from noncommercial educational Station KRSC-FM and fulltime AM Station KTRT.

5. Since petitioner indicated it intends to relocate its transmitter, there will be areas which will lose existing reception service as well as areas which will gain new reception service. Therefore, we request that the petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 264A is allotted to Chelsea. In addition, the study should also indicate the number of reception services which are now available within the gain and loss areas.

TECHNICAL SUMMARY

6. Channel 264A can be allotted to Chelsea in compliance with the Commission's minimum distance separation requirements, with a site restriction of 2.0 kilometers (1.2 miles) southwest, to avoid a short-spacing to Station KGLC, Channel 265A, Miami, Oklahoma.³

7. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

¹ Although the petitioner's request was signed, he failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.420(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of

Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919, n.41 (1990). The petitioner is requested to rectify this omission in his comments.

² All population figures are taken from the 1990 U.S. Census, unless otherwise indicated.

³ The coordinates for Channel 264A at Chelsea are 36-31-27 North Latitude and 95-26-55 West Longitude.

	Channel No.
City	Present Proposed
Chelsea, Oklahoma	- 264A
Claremore, Oklahoma	264A --

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **December 26, 1995**, and reply comments on or before **January 10, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Michael P. Stephens
P.O. Box 1250
Sapulpa, Oklahoma 74067
(Petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.